

Thw

TRANSMITTAL LETTER
(General - Patent Pending)Docket No.
BERN-0082In Re Application Of: **Eric F. Bernstein**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/533,353	June 16, 2005	Not yet assigned	26259	1614	7199

Title: **Compositions and Methods for Prevention of Photoaging**COMMISSIONER FOR PATENTS:

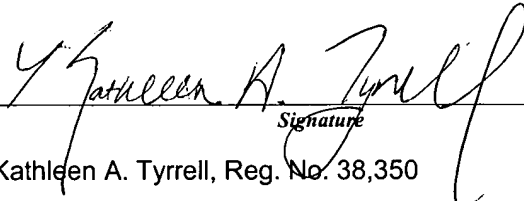
Transmitted herewith is:

Courtesy Copy of the Written Opinion

in the above identified application.

- ☒ No additional fee is required.
- ☐ A check in the amount of _____ is attached.
- ☒ The Director is hereby authorized to charge and credit Deposit Account No. **50-1619** as described below.
- ☐ Charge the amount of _____
- ☒ Credit any overpayment.
- ☒ Charge any additional fee required.
- ☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.



Signature
Kathleen A. Tyrrell, Reg. No. 38,350

Dated: **February 3, 2006**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on

February 3, 2006

(Date)



Signature of Person Mailing Correspondence**Mariana Lennox**

Typed or Printed Name of Person Mailing Correspondence

CC:

DEC 07 2005

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITYTo:
JANE MASSEY LICATA
LICATA & TYRRELL P.C.
66 E MAIN STREET
MARLTON, NJ 08053Docket System
Status Report
Docket Book

2/5/06

PCT

WRITTEN OPINION

(PCT Rule 66)

Date of Mailing
(day/month/year)

05 DEC 2005

Applicant's or agent's file reference

BERN-0071

REPLY DUE

within 2 months/days from
the above date of mailing

International application No.

International filing date (day/month/year)

Priority date (day/month/year)

PCT/US03/34250

29 October 2003 (29.10.2003)

31 October 2002 (31.10.2002)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A61K 43/54 and US Cl.: 514/262, 263

Applicant

BERNSTEIN, ERIC F

1. This written opinion is the first (first, etc.) drawn by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2 (a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application
3. The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. ~~The applicant may, before the expiration of that time limit, request this Authority to grant an extension. See rule 66.2(d).~~

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
For an informal communication with the examiner, see Rule 66.6

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 28 February 2005 (28.02.2005).

Name and mailing address of the IPEA/US

Mail Stop PCT, Attn: IPEA/ US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Facsimile No. (571) 273-3201

Authorized officer

Sreenivasan Padmanabhan

Telephone No. 703-308-1235

Form PCT/IPEA/408 (cover sheet)(July 1998)

I. Basis of the opinion

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed
- ☒ the description:
pages 1-6 _____, as originally filed
pages NONE _____, filed with the demand
pages NONE _____, filed with the letter of _____
- ☒ the claims:
pages 7 _____, as originally filed
pages NONE _____, as amended (together with any statement) under Article 19
pages NONE _____, filed with the demand
pages NONE _____, filed with the letter of _____
- ☐ the drawings:
pages NONE _____, as originally filed
pages NONE _____, filed with the demand
pages NONE _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
pages NONE _____, as originally filed
pages NONE _____, filed with the demand
pages NONE _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.
These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE _____
- ☐ the claims, Nos. NONE _____
- ☐ the drawings, sheets/fig NONE _____

5. ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."

WRITTEN OPINION

International #
PCT/US03/34250

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

Novelty (N)	Claims <u>NONE</u>	YES
	Claims <u>1-7</u>	NO
Inventive Step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-7</u>	NO
Industrial Applicability (IA)	Claims <u>1-7</u>	YES
	Claims <u>NONE</u>	NO

2. CITATIONS AND EXPLANATIONS

Claims 1-6 lack novelty under PCT Article 33(2) as being anticipated by SCHROER (U.S. Patent No. 3,957,994). SCHROER teach composition comprising theophylline useful in the treatment of inflammation of the skin such as sunburn. (columns 5 and 6).

Claim 7 lacks novelty under PCT Article 33(2) as being anticipated by VON BORSTEL et al. (U.S. Patent No. 6,417,170 B2).

VON BORSTEL et al. teach the composition comprising caffeine either alone or in combination with tanning stimulants have been proposed as "sunless" tanning agents. (column 13, lines 50-65).

Claims 1-7 the criteria set out in PCT Article 33(4), because a method of protecting humans exposed to sunlight against photoaging and sunburn comprising topically applying to skin of a human a composition comprising caffeine or a compound structurally similar to caffeine in an amount effective to protect the skin against photoaging and sunburn has an industrial applicability in pharmaceutical art.

----- NEW CITATIONS -----

Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

TIME LIMIT:

The time limit set for response to a Written Opinion may not be extended. 37 CFR 1.484(d). Any response received after the expiration of the time limit set in the Written Opinion will not be considered in preparing the International Preliminary Examination Report.